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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 02.01.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

S.A.No.45 of 1997

Govinda Gounder .. Appellant/ Plaintiff

vs.

The Assistant Divisional Engineer,
Operation & Maintenance,
Tmailnadu Electricity Board,
Thiyagudurgam. .. Respondent/ Defendant

Prayer: This Second Appeal has been filed u/s 100 CPC against the Judgment and Decree dated 24.11.1994 made in A.S.No.227 of 1994 on the file of the District Judge, Villupuram, confirming the decision of the District Munsif, Kallakurichi passed in O.S.No.264/1986 dated 22.11.1990.

For Appellant : Mr.R.Balasubramanian
For Respondent : Mr.N.Muthusamy

JUDGMENT

This second appeal has been preferred against the decree and judgment in A.S.No.227/1994 on the file of the District Court, Villupuram, dated 24.11.1994. The plaintiff filed O.S.No.264/1986 on the file of the District Munsif, Kallakurichi, for permanent injunction restraining the defendants from disconnecting the electricity supply to the motor installed in the plaint schedule property.

2. The short facts of the case of the plaintiff in the plaint for the purpose of deciding this appeal are as follows:-

The plaintiff owns a well in S.No.45/1 in Peelamedu village and another well in S.No.176 in Kalayanallur village. In each of the above said wells five horse power motor bump-set where installed by the plaintiff. Both the motor pump-sets were supplied with the electricity connection by the electricity board. No.32 is the electricity connection number relating to the pump-set in the well in the peelamedu village. The well in the Kalayanallur village was given electricity connection No.140. The plaintiff has been regularly paying the electricity consumption charges in respect of both the motor pump-sets. On

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15.4.1986 the defendant issued a notice stating that the electricity connection was sanctioned only for the well in Peelamedu village and not for the well in the Kalayanallur village. The defendant is taking illegal steps to disconnect the electricity connection in respect of electricity connection No.140. The plaintiff is in possession of the electricity connection in respect of the above said motor pump-sets after getting appropriate electricity sanction order. No one has so far preferred any complaint against the possession and enjoyment of the above said well to the defendant. Hence, the plaintiff has filed the suit for permanent injunction restraining the defendant from disconnecting the electricity supply to the electricity connection No.140 to the well in Kalayanallur village in respect of the suit property.

3. The defendant has filed a written statement contending as follows:-

The allegations that the plaintiff is having a well in Peelamedu village in S.No.45/1 and another well in S.No.176 in Kalayanallur village are denied as false. In the above survey number property there is no well at all. The plaintiff has applied for electricity connection in respect of S.No.49/5 and obtained connection No.32. The plaintiff has also applied for electricity connection for the well in S.No.45/1 on 10.8.1973. On the basis of the application preferred by the plaintiff, the defendant has sanctioned for the supply of electricity connection. But on inspection it was found that the plaintiff has obtained electricity supply for the well in survey No.176/4 in Kalayanallur village as showing that the well is situated in survey No.45/1 of Peelamedu village and obtained electricity connection No.140. The plaintiff has not applied for electricity connection for the well in S.No.176/4 at Kalayanallur. The property in S.No.176/4 is a tank poramboke. The plaintiff was given a notice of instruction dated 15.4.1987 from the Tahsildar Kallakurichi to show that he is the owner of the above said S.No.176/4. But the plaintiff has not obtained and produced neither ownership certificate nor no objection certificate from the Tahsildar. The plaintiff has no right to get electricity supply connection for the well in S.No.176/4 in Kalayanallur village. The defendant has every right to disconnect the electricity connection No.14 which was obtained by him clandestinely. The suit is liable to be dismissed.

4. In the additional written statement filed by the defendant, the defendant has contended that the plaintiff is in possession of the suit well without any right. The Tahsildar of Kallakurichi has refused to issue no objection certificate to the plaintiff. The plaint claim of the plaintiff that he is in possession of the suit well over a statutory period, is denied. The defendant has received many complaints against the plaintiff

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from the public regarding the enjoyment of the suit electricity connection No.140. The plaintiff is not entitled to an order of permanent injunction.

5. On the above pleadings the trial Court has framed three issue and on the basis of the documentary and oral evidence has dismissed the suit holding that the plaintiff is not entitled to any relief under the plaint. Aggrieved by the findings of the learned trial Court, the plaintiff preferred A.S.No.227/1997 on the file of the District Court, Villupuram. The learned District Judge after going through the findings of the learned trial Judge, after due deliberations of the contentions of both parties and after going through the available documents on both sides, has come to a conclusion that there is no reason to interfere with the findings of the learned trial judge and accordingly dismissed the appeal confirming the decree and judgment of the trial Court. Aggrieved by the findings of the first appellate Court the plaintiff has preferred this second appeal.

6. The substantial questions of law involved in this appeal are as follows:-

i) Whether the Courts below are justified in negativing the right of the plaintiff to hold service connection in R.S.No.176 when it was specifically denied that he opted for only two connections viz. S.C.No.32 in S.No.45/1 and S.C.No.140 in R.S.No.176 and not in S.C.No.49/1 ?

ii) Whether the courts below are justified in negativing the right of the plaintiff over S.C.No.140 in R.S.No.176 when especially the defendants have failed to prove their contentions with oral and documentary evidence ?

7. The points 1 & 2:- The suit is for permanent injunction restraining the defendant-Assistant Divisional Engineer, Tamil Nadu Electricity Board, not to disconnect the electricity connection No.140 for the electricity motor pump-set in the well in Kalayanallur village. It is the definite case of the defendant-Electricity Board that the electricity connection No.140 was sanctioned to the plaintiff for the motor pump-set in the well in Kalayanallur Village. But the said well is situated in S.No.176/4, a tank poramboke of Kalayanallur Village and that the plaintiff had misrepresented the fact by saying that the well in Kalayanallur village is situated in S.No.45/1 in stead of S.No.176/4 and obtained electricity connection No.140. Since the plaintiff has failed to produce neither the no objection certificate nor the ownership certificate from the Tahsildar, Kallakurichi to show that S.No.176/4 belongs to the plaintiffs, the defendant has got every right to disconnect the electricity connection No.140 given to the motor pump-set in the well in S.No.176/4 of Kalayanallur village. Under Ex.A.1-notice, the defendant has clearly stated that on 10.03.1973 the plaintiff has

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applied for electricity connection for the motor pump-set in S.No.45/1 of Peelamedu Village and electricity connection was sanctioned after entering into an agreement with the electricity board on 17.09.1984. But electricity connection No.140 was actually given for the motor pump-set installed in the well in S.No.176 of Kalayanallur village in S.No.45/1 of Peelamedu village. It is the specific case of the defendant that on inspection the above said defect was found out and the plaintiff was asked to produce no objection certificate in respect of S.No.176/4, a tank poramboke, to show that the plaintiff is in possession of the same. Since the plaintiff has failed to produce neither no objection certificate nor any certificate to show his legal possession over S.No.176/4 in Kalayanallur village, both the Courts below have rightly dismissed the case of the plaintiff. I do not find any valid reason to interfere with the findings of the first appellate Court which has passed a well considered judgment. The learned counsel appearing for the appellant has produced a no-objection certificate dated 31.03.1995 before this Court to show that the plaintiff is in possession of S.No.176. The said document was ordered to be received by this Court as per the order in CMP.No.703/1997. But, the said document has been obtained by the plaintiff after the disposal of A.S.No.227/1994. Under such circumstances, the remedy open to the plaintiff is to approach the defendant afresh with this no-objection certificate dated 31.3.1995 for appropriate relief. Points are answered accordingly.

8. In the result, the appeal is dismissed confirming the decree and judgment in A.S.No.227/1994 on the file of the District Court, Villupuram. If the appellant approaches the respondent/defendant afresh with this no-objection certificate, dated 31.3.1995, the respondent/defendant may consider the same and pass necessary orders for restoring the electricity supply to the motor pump-set situated in S.No.176/4. Parties shall bear their own costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To,

1.The District Judge, Villupuram.

2.The District Munsif, Kallakurichi.

3. The Section Officer,
V.R. Section, High Court, Madras.1

1 cc to Mr.N. Muthusamy, Advocate, sr. 521

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